



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE:

Request that City Join Amicus Brief in the case of Roman Catholic Archbishop of San Francisco (St. John's Cemetery) v. The City of San Mateo. (First Appellate District)

MEETING DATE:

November 20, 1996

PREPARED BY:

City Attorney

RECOMMENDATION:

That the city join the amicus brief in the case of Roman Catholic Archbishop of San Francisco (St. John's Cemetery) v. The City of San Mateo. (First Appellate District)

BACKGROUND:

Amicus briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court, and are designed to assist the court. This request for amicus brief support has been requested by the Legal Advocacy Committee of the League of California Cities.

This case arose out of a zoning action by the City of San Mateo. The City undertook to amend its zoning ordinance relative to the regulation of cemeteries. San Mateo allows cemeteries within its residential districts. The proposed regulations grew out of neighborhood concerns that developed when it became known that the St. John's Cemetery intended to build structures as large as twenty-seven feet high and eighty-five feet long. San Mateo currently has two cemeteries within its boundaries, one of which is St. John's Cemetery. There are additional cemetery sites within the City of San Mateo.

The ordinance adopted by San Mateo which sought to regulate cemeteries was challenged by the owners of the St. John's Cemetery. The trial court invalidated the zoning ordinance regulating cemetery development in a residential district. The City has appealed this trial court decision. The question on appeal is whether or not zoning ordinances are subject to invalidation as unconstitutional spot zoning or a taking even if their land use restrictions are imposed on similar properties within a zoning district and reasonably related to legitimate police power objectives. The court in this case also found that it was inappropriate for the City to consider such regulations based upon the concerns of those who lived in or near cemeteries. The court found it somewhat incredible that the City should react to its citizenry who was concerned about the way cemeteries were operated in the community. This finding by the court in and by itself is quite troublesome since we all know that local government is responsive to the citizens within its confines.

This case deserves to be supported in order to have it overturned so that local control by City Council's acting on legitimate issues is maintained.

FUNDING: Not applicable.

Respectfully submitted,

Randall A. Hays, City Attorney

APPROVED: _____

H. Dixon Flynn -- City Manager